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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	94002212
Party	Applicant Westfield Savings Bank
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Submission	Response to Board Order/Inquiry
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE  
THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:

Westfield Savings Bank  
Serial No. 76/229151

Concurrent Use No. 94002212

V.

Ohio Farmers Insurance Company  
Registration No. 2992750

V.

Westfield Financial Corporation  
Registration No. 3139398

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, Virginia 223131-1451

**MOTION IN RESPONSE TO ORDER TO SHOW CAUSE**

Westfield Savings Bank d/b/a Westfield Bank ("Applicant"), through its undersigned counsel, files this motion in response to the TTAB's order to show cause dated July 17, 2008 (the "Order"). As noted by the TTAB, the Order was instituted because Applicant's time for filing a brief on the case has expired.

Applicant has not lost interest in the case. Rather, Applicant did not realize that a further filing was needed to complete the concurrent use registration process and therefore inadvertently allowed the time for filing a brief to expire. As explained below, Applicant requests that the TTAB and Commissioner for Trademarks act favorably on Applicant's application for concurrent use registration of the mark WESTFIELD BANK.

On September 7, 2005, Applicant filed a Revised Amendment to Recite Concurrent Use with the Commissioner for Trademarks requesting concurrent use registration of the WESTFIELD BANK service mark. In its September 7, 2005 filing, Applicant advised the examining attorney that, as of December 23, 2004, Applicant had entered into a settlement agreement (the "Settlement Agreement") with the concurrent use registrants, namely Ohio Farmers Insurance Company ("Ohio Farmers") and Westfield Financial Corporation ("WFC"). Applicant included a copy of the Settlement Agreement in its September 7, 2005 filing together with a letter of consent from Ohio Farmers.

When the present concurrent use proceeding was instituted, neither Ohio Farmers nor WFC filed an Answer or any other paper. This was consistent with the Settlement Agreement between the parties, and Applicant did not realize that it would be required to make a further filing to terminate the concurrent use proceeding. Now that this requirement has been brought to Applicant's attention, Applicant is submitting a copy of its September 7, 2005 filing, including the Settlement Agreement and letter of consent, to the TTAB for review. These documents are attached hereto as Exhibit 1. Applicant is also submitting a copy of the Joint Statement in Support of Concurrent Use Registrations, which was originally filed by counsel for Ohio Farmers in parent opposition proceeding no. 91153975. This document is attached hereto as Exhibit 2. Since Ohio Farmers and WFC have already consented to Applicant's concurrent use registration of the WESTFIELD BANK service mark, neither Ohio Farmers nor WFC will be prejudiced by the approval of such registration at this time.

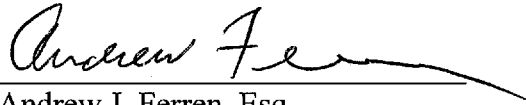
Therefore, Applicant requests that the TTAB and the Commissioner for Trademarks, as appropriate:

1. Discharge the TTAB's show cause order, accept this motion as Applicant's brief, approve Applicant's request for a concurrent use registration of the WESTFIELD BANK mark, and terminate the concurrent use proceeding; and
2. Issue a concurrent use registration of the WESTFIELD BANK mark as set forth in Applicant's September 7, 2005 filing.

Respectfully Submitted,

WESTFIELD SAVINGS BANK d/b/a  
WESTFIELD BANK

By its attorney,



Andrew J. Ferren, Esq.  
GOULSTON & STORRS, P.C.  
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Boston, MA 02110  
(617) 574-3546  
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Date: August 1, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion in Response to Order to Show Cause was served on the following parties via U.S. Mail this 1<sup>st</sup> day of August, 2008:

Suzann R. Moskowitz, Michael D. Stovsky  
Ulmer & Berne LLP  
1660 West 2<sup>nd</sup> Street, Suite 1100  
Cleveland, OH 44113-1448

Joseph R. Dreitler  
Bricker & Eckler LLP  
100 S. Third Street  
Columbus, OH 43215-4291

  
\_\_\_\_\_  
Andrew J. Ferren

August 29, 2005

***goulston&storrs***  
counsellors at law

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on:

Serial Number: 76/229151  
Mark: WESTFIELD BANK  
(Class 36)

August 29, 2005  
Patricia Heifetz Patricia Heifetz  
Name (print) Signature

**Revised Amendment to Recite Concurrent Use  
Under 37 C.F.R. § 2.73**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Attention: Mr. Henry Zak  
Trademark Attorney  
Law Office 108



Dear Mr. Zak:

09-07-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #57

This Revised Amendment to Recite Concurrent Use is submitted on behalf of our client, Westfield Savings Bank d/b/a Westfield Bank (the "Applicant") in response to the Office Action dated March 16, 2005, which responded to our Amendment to Recite Concurrent Use dated January 7, 2005. In response to the Office Action the Applicant hereby revises its request for amendment of its application to register WESTFIELD BANK to recite concurrent use pursuant to the terms of a certain settlement agreement dated as of December 23, 2004, by and among (1) Westfield Mutual Holding Company, Westfield Financial, Inc., and the Applicant and (2) Ohio Farmers Insurance Company and Westfield Financial Corporation (the "Settlement Agreement"). A copy of the Settlement Agreement is attached hereto as Exhibit A and is incorporated herein by reference. As indicated in the Settlement Agreement, the Applicant is a subsidiary of Westfield Financial, Inc., which in turn is a subsidiary of Westfield Mutual Holding Company. Similarly, as indicated in the Settlement Agreement, Westfield Financial Corporation is a subsidiary of Ohio Farmers Insurance Company.

The Applicant hereby requests concurrent use registration of its mark on the Principal Register for the areas comprising Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and that portion of the State of New York that lies East of Interstate 81 (the "New England Territory").

As required under 37 C.F.R. § 2.42, the Applicant states that it is aware that Westfield Financial Corporation, located at Two Park Circle Westfield Center, Ohio

44251, is concurrently using WESTFIELD BANK, Serial No. 76/159889 (the "Concurrent Mark") for "banking; savings and loan services" in areas outside of the New England Territory. Based on Westfield Financial Corporation's Statement of Concurrent Use, the Applicant understands that Westfield Financial Corporation has been using the Concurrent Mark for these services since at least as early as February 2001 in Ohio and other states outside of the New England Territory.

In addition to the Concurrent Mark, the mark WESTFIELD GROUP (Serial No. 76/165113) was cited as a basis to suspend action with respect to the Applicant's application to register WESTFIELD BANK. In accordance with the terms of the Settlement Agreement, Ohio Farmers Insurance Company has provided a written consent to the concurrent registration of WESTFIELD BANK by the Applicant. A copy of the consent is attached hereto as Exhibit B and incorporated herein by reference.

The Applicant confirms that it is using the Concurrent Mark in connection with "retail, commercial, savings, and mortgage banking services, namely, individual, partnership and corporate deposit accounts; personal, business and commercial loans, lines of credit and lease financing; safe deposit, depository and safekeeping services; and personal, consumer, business and commercial financial transactional services." The Applicant further states that it claims exclusive rights to use the Concurrent Mark in connection with the aforementioned services in the New England Territory. The Applicant understands that Westfield Financial Corporation and Ohio Farmers Insurance Company claim exclusive rights to use the Concurrent Mark outside the New England Territory.

\* \* \* \*

We appreciate your further attention to this matter. If you need any additional information or have questions, please call me at (617) 574-3546.

Very truly yours,

  
Andrew J. Ferren

Exhibit A

***goulston&storrs***  
counsellors at law

**Settlement Agreement**



## SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT ("Agreement") dated as of December 23, 2004 (the "Effective Date"), by and among Westfield Mutual Holding Company, a Massachusetts chartered mutual holding company ("WMHC"), Westfield Financial, Inc., a Massachusetts corporation ("WFD"), and Westfield Savings Bank d/b/a Westfield Bank, a Massachusetts corporation ("WSB" and, collectively with WMHC and WFD, the "Massachusetts Parties"), each of which is located at 141 Elm Street, Westfield, Massachusetts 01085; and Ohio Farmers Insurance Company, an Ohio corporation located at One Park Circle, Westfield Center, Ohio 44251 ("Ohio Farmers"), and Westfield Financial Corporation, an Ohio corporation located at Two Park Circle, Westfield Center, Ohio 44251 ("WFC" and, collectively with Ohio Farmers, the "Ohio Parties"), both of which are members of the group of Westfield Companies. Each of the Massachusetts Parties, on the one hand, and the Ohio Parties, on the other hand, is sometimes referred to herein individually as a "party" and collectively as the "parties."

WHEREAS, WSB is the wholly-owned subsidiary of WFD, whose stock is traded on the American Stock Exchange under the symbol "WFD," and the indirect subsidiary of WMHC;

WHEREAS, WSB claims (i) that it has provided various banking services under the name "Westfield Savings Bank" from April 1853 to approximately March 1997, when it deleted the word "Savings" from its name, and (ii) that it has since used the WESTFIELD BANK mark in interstate commerce in connection with various banking services continuously from March 1997 to the present;

WHEREAS, on July 10, 2000, WSB registered the domain name "westfieldbank.com" and now operates an Internet web site accessible via that domain name;

WHEREAS, on March 23, 2001, WSB filed a use-based federal trademark application (Serial No. 76/229151) to register the mark WESTFIELD BANK in connection with "retail,

commercial, savings, and mortgage banking services, namely, individual, partnership and corporate deposit accounts; personal, business and commercial loans, lines of credit and lease financing; safe deposit, depository and safekeeping services; and personal, consumer, business and commercial financial transactional services”, and such application is currently in suspension pending the outcome of certain trademark applications filed by WFC and Ohio Farmers, respectively;

WHEREAS, Ohio Farmers is the parent company of a group of property and casualty insurance companies collectively referred to as the Westfield Companies, including Ohio Farmers Insurance Company, Westfield Insurance Company, Westfield National Insurance Company, Beacon Insurance Company of America, American Select Insurance Company, Old Guard Insurance Company, Old Guard Fire Insurance Company, First Patriot Insurance Company, First Delaware Insurance Company, and Neffsville Mutual Fire Insurance Company, which group of companies claims to have begun using the name WESTFIELD COMPANIES as its trade name in 1971 and WESTFIELD GROUP as a service mark in approximately February 2001;

WHEREAS, on November 14, 2000, Ohio Farmers filed an intent-to-use federal trademark application (Serial No. 76/165113) to register the mark WESTFIELD GROUP in connection with “insurance underwriting services in the field of property, casualty, accident, and health; fidelity and surety services; insurance agency services in the field of property, casualty, accident and health; insurance brokerage services; banking and financing services; financial planning services; financial management services”;

WHEREAS, on November 25, 2002, WSB filed Notice of Opposition No. 91153975 with respect to Serial No. 76/165113;

WHEREAS, WFC, a wholly-owned subsidiary of Ohio Farmers, filed an intent-to-use federal trademark application (Serial No. 76/159889) on November 6, 2000 to register WESTFIELD BANK in connection with "banking; savings and loan services";

WHEREAS, on August 11, 2003, the Massachusetts Parties filed Notice of Opposition No. 91157514 with respect to Serial No. 76/159889;

WHEREAS, WFC claims to have begun using WESTFIELD BANK as a service mark in connection with "banking; savings and loan services" in approximately February 2001;

WHEREAS, on July 12, 2000, WFC (d/b/a Westfield Bank) registered the domain name "westfield-bank.com," which WFC or an affiliated company is using in connection with providing banking services;

WHEREAS, each of the Massachusetts Parties, on the one hand, and the Ohio Parties, on the other hand, contends that it has priority to use and register certain trade names, service marks, and/or domain names containing the "Westfield" name in its respective geographic area;

WHEREAS, based upon the best information available to the parties, it appears that they have become entitled to use each of their respective marks in their respective geographic areas as a result of their concurrent lawful use in commerce on such goods and in connection with such services, and in such manner, that confusion, mistake, or deception has not resulted from such concurrent use in their respective geographic areas; and, while there has been no actual confusion, mistake, or deception up to this time, the parties desire to take actions necessary to ensure that confusion, mistake, or deception will not likely result in the future from such continued concurrent use; and

WHEREAS, the Massachusetts Parties and the Ohio Parties now desire to resolve their differences and to settle the controversy between them regarding use and registration of

"Westfield", and to take actions necessary to ensure that confusion, mistake or deception will not likely result from the continued concurrent use of the respective marks, on the terms and conditions set forth in this Agreement regarding their respective future concurrent uses of the marks WESTFIELD BANK and WESTFIELD FINANCIAL.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Massachusetts Parties and the Ohio Parties hereby agree as follows:

1. Concurrent Use and Registration of WESTFIELD BANK

1.1. The parties hereby agree that each of WSB and WFC shall be permitted to continue to use the WESTFIELD BANK mark for banking and savings and loan services subject to the terms and conditions hereof.

1.2. The Ohio Parties agree not to use WESTFIELD BANK for banking and savings and loan services in the New England Territory, and the Massachusetts Parties agree not to use WESTFIELD BANK for banking and savings and loan services outside of the New England Territory. For purposes of this Agreement, (i) the "New England Territory" means the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and that portion of the State of New York that lies East of Interstate 81 as depicted on the attached map of New York State, including New York City and Long Island (see Exhibit A); (ii) "Geographic Territory" means either the New England Territory or the portion of the United States outside of the New England Territory, as the case may be; and (iii) "use" within a specified Geographic Territory means (a) use of the mark in connection with the operation of a branch bank or other physical presence within the specified Geographic Territory, or (b) use of the mark in connection with advertising or other solicitation activities targeting customers or prospective customers in the specified Geographic Territory.

1.3. Within fifteen (15) days after the Effective Date of this Agreement, (i) WSB shall file an amendment to its federal trademark application to register WESTFIELD BANK to request a concurrent use registration limited to the New England Territory and (ii) the Massachusetts Parties shall file a voluntary dismissal with prejudice of their opposition to WFC's application to register WESTFIELD BANK.

1.4. Within fifteen (15) days after the Effective Date of this Agreement, WFC shall file an amendment to its federal trademark application to register WESTFIELD BANK (i) to allege use so as to make such application eligible for a concurrent use registration and (ii) to request a concurrent use registration with respect to the portion of the United States other than the New England Territory. In WFC's discretion, WFC may file a new use-based concurrent use application to register WESTFIELD BANK in lieu of amending its existing application. The amendment referred to in Section 1.3 and the amendment or new application referred to in Section 1.4 are referred to collectively as the "Amendments."

1.5. In support of their respective Amendments, the parties shall cooperate with each other in pursuing expedited concurrent use proceedings before the Trademark Trial and Appeal Board ("TTAB") based on a stipulation between the parties and any other supporting materials required by the U.S. Patent and Trademark Office ("PTO") for that purpose. At a minimum, the parties shall file a joint request that discovery and testimony periods be eliminated and that the parties be permitted to file their joint stipulation of testimony and a joint brief in support of their request that concurrent registrations be issued. The form of joint request and stipulation is attached hereto as Exhibit 1.

1.6. Subject to the other party's compliance with the terms and conditions of this Agreement, the Massachusetts Parties and the Ohio Parties agree not to oppose each other's

Amendments and agree not to petition to cancel any resulting registrations of WESTFIELD BANK for banking and/or savings and loan services.

1.7. If WSB or WFC is unable to obtain a concurrent use registration of WESTFIELD BANK, then such party will consent to the other party obtaining a nationwide registration on the condition that such other party will license the mark to the consenting party on a perpetual, irrevocable, exclusive (as to the licensor and third parties), royalty-free basis for use within the consenting party's Geographic Territory.

1.8. Ohio Farmers shall provide a letter of consent consistent with the terms of this Agreement, in the form attached hereto as Exhibit 2 in support of WSB's concurrent use registration of WESTFIELD BANK.

1.9. If neither WFC nor WSB is able to obtain a registration of WESTFIELD BANK, then the parties shall be permitted to use the WESTFIELD BANK mark in their respective Geographic Territories (namely, within the New England Territory for WSB and all areas outside of the New England Territory for WFC) without objection or interference by the other party, this Agreement shall otherwise remain in effect and each party may assert its common law rights within its respective Geographic Territory against third parties and may obtain such state trademark registrations within such party's respective Geographic Territory as such party desires.

1.10. Irrespective of any concurrent use or other registrations obtained by either party, each party will be responsible for asserting or defending any infringement claims relating to use of WESTFIELD BANK or a confusingly similar mark by such party or a third party in such party's respective Geographic Territory.

1.11. If WSB or WFC decides to permanently discontinue its use of WESTFIELD BANK at any time after the Effective Date, then the discontinuing party shall promptly notify the

other party and this Agreement shall terminate, but only as to use and registration of WESTFIELD BANK. If requested by the party that is continuing to use WESTFIELD BANK, the discontinuing party will either voluntarily cancel its concurrent use registration or assign its rights in the mark WESTFIELD BANK to the party continuing to use such mark so that such party may attempt to remove a concurrent use restriction by amendment under Section 7(e) of the Lanham Act. Whether or not the continuing party requests and receives an assignment of rights from the discontinuing party, the discontinuing party's rights in WESTFIELD BANK will be lost and the continuing party may thereafter use the mark in all proper ways, unrestricted by this Agreement, and may thereafter apply for and obtain a federal registration of its mark unrestricted by this Agreement.

2. Use and Registration of WESTFIELD GROUP

2.1. Within fifteen (15) days after the Effective Date, WSB shall file a voluntary dismissal with prejudice of its opposition to Ohio Farmers' application to register WESTFIELD GROUP. It is the essence of this Agreement that upon, the Effective Date, WSB agrees to neither challenge the Ohio Parties' use of, nor petition to cancel, any registration the Ohio Parties may obtain as a result of any application to register WESTFIELD GROUP now or in the future.

2.2. WSB, WFD, and WMHC will not use or seek to register WESTFIELD GROUP or WESTFIELD INSURANCE for any goods or services.

3. Use and Registration of WESTFIELD FINANCIAL

3.1. The Ohio Parties shall not challenge or object to WFD's continued use of the WESTFIELD FINANCIAL mark (or any logo version or other variation thereof) and the "Westfield Financial, Inc." trade name throughout the United States of America on any goods or services other than insurance services. If WFD applies for federal registration of the

WESTFIELD FINANCIAL mark for any goods or services other than insurance services, the Ohio Parties will not oppose any such application and, if necessary, will provide a letter of consent substantially in the form of Exhibit 2.

3.2. WFC may continue to use WESTFIELD BANK as its d/b/a name but shall not use or register the WESTFIELD FINANCIAL mark (or any logo version or other variation thereof) in connection with promoting any services to customers and potential customers either inside or outside of the New England Territory. Notwithstanding anything to the contrary herein, WFC may refer to "Westfield Financial Corporation" as its official name in regulatory filings, legal notices and related documents, and in other situations in which WFC is required to use a legal name to show its corporate identity.

4. Use and Registration of other WESTFIELD marks. With the exception of the terms WESTFIELD BANK, WESTFIELD FINANCIAL and WESTFIELD GROUP, as set forth in Articles 1, 2 and 3 above, the Ohio Parties are free to use and/or register "WESTFIELD", for anything other than banking and savings and loan services, whether alone or in combination with other terms, and WSB will not object to such use or registration. By way of example only, the Ohio Parties are currently using (and shall be free to continue using or seek to register) the following names for the services which are part of the name, as follows: Westfield Insurance Company, Westfield National Insurance Company, Westfield Credit Corporation, Westfield Mortgage Co. LLC, Westfield Title, Westfield Escrow and Westfield Services, Inc. (an agency company).

5. Use of Marks on the Internet.

5.1. Subject to the other terms and conditions of this Agreement, (i) WSB shall be permitted to maintain its registration of and to use the westfieldbank.com domain name as long as such domain name is not used in connection with advertising or other solicitation activities



specifically targeting customers or potential customers outside of the New England Territory, and (ii) the Ohio Parties shall be permitted to maintain their registration of and to use the westfield-bank.com domain name as long as such domain name is not used in connection with advertising or other solicitation activities specifically targeting customers or potential customers within the New England Territory. Notwithstanding the foregoing, the parties acknowledge and agree that their respective Internet web sites are and may continue to be accessible to customers located in each other's territories and that such conflict shall be addressed through the procedures set forth in this Article 5.

5.2. Within sixty (60) days after the Effective Date, each party will (i) in order to make certain that there is no likelihood of confusion arising from the parties' respective Internet uses of WESTFIELD BANK in their respective Geographic Territory, both parties agree that on the first page of their respective web sites for Westfield Bank, they will prominently state, in equal size, to be agreed on and attached as Exhibit B to this Agreement: (a) in the case of WSB's web site: "Are you looking for Westfield Bank of Ohio?" with a hyperlink to the Ohio Parties' web site for Westfield Bank; and (b) in the case of the Ohio Parties' web site: "Are you looking for Westfield Bank of Massachusetts?", with a hyperlink to the WSB web site; (ii) incorporate reasonably specific geographic and other business identification information into such party's web site home page; and (iii) adopt other internal procedures reasonably calculated to identify and redirect incoming web traffic from outside the party's respective Geographic Territories or intended for the other party's web site. The parties will continue to consult each other in good faith following such initial sixty (60) day period to establish and refine procedures for avoiding customer confusion, redirecting misdirected communications, and preserving the separate identities of the parties. The parties will also consult each other before registering and using any additional domain names containing the word "westfield" for banking or savings and loan services.

6. Mutual Release of Claims.

6.1. WSB on behalf of itself and all of its Affiliates hereby releases and forever discharges the Ohio Parties, all of their Affiliates, and all of their respective past and present directors, officers, employees, agents, and representatives (collectively, the "Ohio Releasees") from any and all claims, actions, causes of action, suits, debts, charges, complaints, demands, agreements, liabilities, damages, losses or obligations of any kind and nature whatsoever, whether known or unknown, which any of the Massachusetts Parties now has or has ever had against the Ohio Releasees arising out of or relating to the use of and efforts to register the WESTFIELD BANK, WESTFIELD GROUP, and WESTFIELD FINANCIAL marks prior to the Effective Date.

6.2. The Ohio Parties on behalf of themselves and all of their Affiliates hereby release and forever discharge WSB, WFD, WMHC, their Affiliates, and all of their respective past and present directors, officers, employees, agents, and representatives (collectively, the "WSB Releasees") from any and all claims, actions, causes of action, suits, debts, charges, complaints, demands, agreements, liabilities, damages, losses or obligations of any kind and nature whatsoever, whether known or unknown, which either of the Ohio Parties now has or has ever had against the WSB Releasees arising out of or relating to the use of and efforts to register the WESTFIELD BANK, WESTFIELD GROUP, and WESTFIELD FINANCIAL marks prior to the Effective Date.

6.3. "Affiliate," with respect to either party, means any entity controlled by, controlling or under common control with such party, and any director, officer, agent or employee of such entity. For the purposes hereof, "control" means direct or indirect ownership of 20% or more of the voting stock or other class of equity interest in any entity, or the power to

elect or appoint a majority of the board of directors or other governing body of such entity, or the power to otherwise manage or direct the business affairs of such entity.

7. Assignment; Change of Control. Neither party may assign this Agreement or any of such party's rights or obligations hereunder to any unrelated third party, except that either party may assign or otherwise transfer this Agreement in whole or in part without the other party's consent to: 1) an Affiliate or related entity of such party, or 2) a successor to the business of such party (whether by merger, consolidation, reorganization, or sale of assets). Subject to the foregoing, this Agreement will be binding on and enforceable by the parties and their respective successors and permitted assigns.

8. Dispute Resolution. In the event of any dispute with respect to any provision of this Agreement, any party hereto may give written notice to the other party of such dispute and the parties shall thereafter proceed as follows:

- (i) If one party considers that the other party is in breach of this Agreement, it shall so notify the other party in writing (a "Dispute Notice"), setting forth in reasonable detail the particulars of the alleged breach. The other party shall, within thirty (30) days after its receipt of such notification, either (a) cure the alleged breach, or (b) state in writing why it does not believe that such a breach exists. In the latter case, as well as in case the other party makes no reply within the mentioned term of thirty (30) days, the remaining provisions of this Paragraph 8 shall apply.
- (ii) The parties agree to use their best efforts, in good faith, to resolve any dispute(s) under this Agreement in order to avoid the necessity of arbitral proceedings relating to such dispute(s). Arbitration proceedings shall be instituted only after the parties have failed to find a solution to such dispute at a meeting with a representative of senior management of each party (at the Vice President level or higher) convened for this purpose within thirty

(30) days of the occurrence of a dispute as defined in the last sentence of the previous Subsection or in case a party fails to appear at a meeting scheduled for a reasonable time or place, to which the other party had extended an invitation in writing.

(iii) All disputes regarding the rights and obligations arising out of or in connection with this Agreement shall be settled finally by arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), including without limitation the Optional Rules for Emergency Measures of Protection and any successor rules concerning emergency relief, subject to such specific modifications as are agreed between the parties and are acceptable to the arbitration tribunal. Such arbitration shall take place in New York, New York.

(iv) If the senior managers designated by the parties are not able to resolve the dispute in accordance with the foregoing subsection (i) within sixty (60) days following the transmission of the Dispute Notice, then either party may file a Request for Arbitration pursuant to (a) the Commercial Arbitration Rules or (b) the Commercial Arbitration Rules as modified by the Optional Emergency Rules, and if pursuant to the foregoing clause (a), then each party will nominate one arbitrator. If any party does not nominate its arbitrator within sixty (60) days following the filing of the Request for Arbitration, the other Party may request the President of the AAA to appoint such an arbitrator. The two arbitrators who are nominated shall agree upon the nomination of a third arbitrator. If the two arbitrators so nominated do not agree on a third arbitrator within sixty (60) days following the filing of the Request for Arbitration, the third arbitrator shall be appointed by the President of the AAA.

(v) The award of the arbitration shall be final and binding upon the parties, and may be entered and enforced in any court of competent jurisdiction. Without limiting the foregoing, each

party consents to the jurisdiction of the state and federal courts in the Commonwealth of Massachusetts and the State of Ohio for purposes of any suit to compel mediation or arbitration and any suit to confirm and enforce an arbitration award.

- (vi) The prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in obtaining the dispute resolution, as outlined above.

## 9. Miscellaneous

9.1. Entire Agreement; Modifications. This Agreement constitutes the entire understanding of the parties with respect to the matters set forth herein and supersedes all prior and contemporaneous written and/or oral understandings among the parties with respect thereto. No amendment, modification or waiver of any of the provisions of this Agreement shall be valid unless set forth in a written instrument signed by the Massachusetts Parties and the Ohio Parties.

9.2. No Waiver. No waiver by any party to this Agreement of any provision hereof, and no failure by any party to exercise any of such party's rights or remedies hereunder, shall be deemed to constitute a waiver of such provision, right, or remedy in the future, or of any other provision, right, or remedy hereunder, unless such waiver shall be set forth in a written instrument signed by the party against whom such waiver is sought to be enforced.

9.3. Term. This Agreement shall continue in full force and effect in perpetuity unless and to the extent (i) terminated in accordance with Section 1.11, or (ii) terminated by mutual written agreement of the parties. In addition, a party may terminate this Agreement by written notice to the other party if (x) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or (y) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency,

receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days following initial filing thereof. For purposes of this Section 9.3, the Massachusetts Parties shall be considered to be one party and the Ohio Parties, collectively, shall be considered to be the other party; provided that a breach, petition, or proceeding involving any one of the Massachusetts Parties or any one of the Ohio Parties shall be sufficient to trigger this Section 9.3.

9.4. Independent Contractors; No Franchise. Each party is an independent contractor, and the parties shall not be considered agents or legal representatives of each other and shall have no power or authority to bind or commit each other. The parties expressly acknowledge that no franchise, partnership or joint venture relationship exists or is intended to exist between the parties during the term of this Agreement.

9.5. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be construed in all respects as if such invalid or unenforceable provision were replaced with a valid and enforceable provision as similar as possible to the one replaced, and the remainder of this Agreement shall continue in full force and effect and shall not be invalidated, impaired, or otherwise affected.

9.6. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficiently given (i) the following business day after having been timely sent by reputable overnight courier service for priority, next day delivery, (ii) upon confirmation of receipt by the recipient after having been sent by electronic mail or fax, in each case to the applicable Party's street address, e-mail address, or fax number as set forth below (as the same may be amended by such Party upon written notice to the other), or by such other means

as the parties may hereafter agree in writing, and shall only be effective if delivered to all addressees indicated as follows:

If to the Massachusetts Parties:

Donald A. Williams, President  
Westfield Savings Bank d/b/a Westfield Bank  
141 Elm Street  
Westfield, MA 01085  
Fax: (413) 562-0852  
E-mail: dwilliams@westfieldbank.com

With a copy to:

Andrew J. Ferren, Esq.  
Goulston & Storrs, P.C.  
400 Atlantic Avenue  
Boston, MA 02110-3333  
Fax: (617) 574-7589  
E-mail: aferren@goulstonstorrs.com

If to the Ohio Parties:

Frank A. Carrino, Esq.  
General Counsel and Secretary  
Westfield Group  
One Park Circle  
Westfield Center, OH 44251-50001  
Fax: 330-887-7500  
E-mail: FrankCarrino@westfieldgrp.com

With a copy to:

Joseph R. Dreitler, Esq.  
Jones Day  
P.O. Box 165017  
Columbus, OH 43216-5017  
Fax: (614) 461-4198  
E-mail: jrdreitler@jonesday.com

9.7. Disclosure. Neither the Massachusetts Parties nor the Ohio Parties will object to the submission of a copy of this Agreement to the PTO (including the TTAB) in connection with any matter relating to the service marks referred to herein.

9.8. Governing Law; Jurisdiction. This Agreement shall be governed by the Federal Trademark Act and the laws of the State of New York, without regard to conflicts of laws principles. Subject to the provisions of Section 8, any action to enforce, arising out of, or relating in any way to, any of the provisions of this Agreement shall be brought and prosecuted in the state or federal courts within the Commonwealth of Massachusetts or the State of Ohio, and the parties consent to the jurisdiction of said courts and to service of process by registered mail, return receipt requested, or by any other manner provided by law.

9.9. Mutual Warranty. Each party represents and warrants that this Agreement is a legal, valid, and binding agreement, enforceable against such party in accordance with its terms, and that the individual signing the Agreement has the requisite authority to sign on behalf of such party.

9.10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[Signatures on next page]



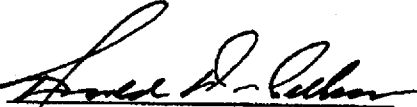
IN WITNESS WHEREOF, the Massachusetts Parties and the Ohio Parties have  
executed this Agreement under seal as of the date first set forth above.

MASSACHUSETTS PARTIES:

OHIO PARTIES:

WESTFIELD SAVINGS BANK

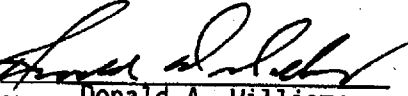
OHIO FARMERS INSURANCE COMPANY

By:   
Name: Donald A. Williams  
Title: President & C.E.O.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

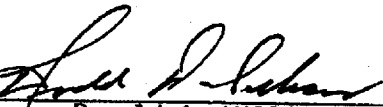
WESTFIELD FINANCIAL, INC.

WESTFIELD FINANCIAL CORPORATION

By:   
Name: Donald A. Williams  
Title: President & C.E.O.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WESTFIELD MUTUAL HOLDING  
COMPANY

By:   
Name: Donald A. Williams  
Title: President & C.E.O.

IN WITNESS WHEREOF, the Massachusetts Parties and the Ohio Parties have  
executed this Agreement under seal as of the date first set forth above.

MASSACHUSETTS PARTIES:

WESTFIELD SAVINGS BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WESTFIELD FINANCIAL, INC.

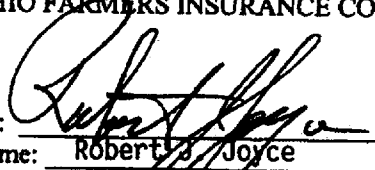
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WESTFIELD MUTUAL HOLDING  
COMPANY


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OHIO PARTIES:

OHIO FARMERS INSURANCE COMPANY

By:   
Name: Robert A. Joyce  
Title: Chief Executive Officer

WESTFIELD FINANCIAL CORPORATION

By:   
Name: John E. Warfel  
Title: President

**Exhibit A**

**New York State Map**

**(Attached)**

# Exhibit A



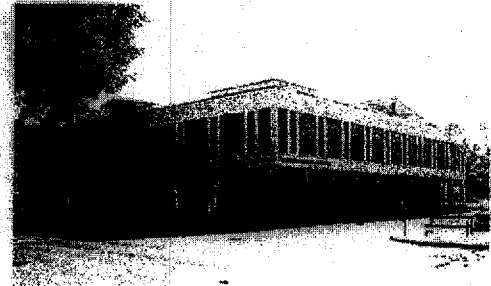
**Exhibit B**

**Agreed Form of Mutual Web Site Links**

**(Attached)**



## Welcome to Westfield Bank Online



- ABOUT US
- PRODUCTS & SERVICES
- BANKING ONLINE
- CASH MANAGER
- TRANSLINK
- LOAN RATES
- DEPOSIT RATES
- ONLINE APPLICATION
- PRIVACY STATEMENT
- CONTACT US
- CAREER OPPORTUNITIES
- INVESTOR RELATIONS

- Banking Online
- Cash Manager
- Locations & Hours
- Auto Loans

[Click here](#) for important information on how the Check 21 Act will affect you.



Are you looking for Westfield Bank of Ohio? [Click Here.](#)

141 Elm Street, Westfield, MA • 413.568.1911  
Member FDIC

**Important Notice**  
We are currently reviewing our privacy policy and may make changes to it. We will post any changes to this page. Please check this page regularly for updates.



**WESTFIELD  
BANK**

A member of Westfield Group

## Welcome to Westfield Bank

November 12, 2004

**Refinance Now!**



**Sharing Knowledge. Building Trust.**

[ONLINE BANKING LOGIN](#) [OPEN AN ACCOUNT](#) [CONTACT US](#)

### Delivering Best Value in Banking

- **Experience** - Our approach revolves around sharing knowledge, building trust.
- **Specialization** - We focus on small businesses, insurance agencies, and individuals.
- **Competitive rates** - You never pay extra for Westfield value.
- **Strength** - Comfort, stability, and peace of mind from Westfield's 155 year heritage.

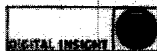
*Westfield Bank offers a better way to bank.*

[Privacy policy](#)

**Insurance  
Needs?**

Are you looking  
for Westfield  
Bank of  
Massachusetts?

Two Park Circle  
Westfield Center  
OH 44261  
(800)-368-6930  
Fax: 330-887-6430



MEMBER  
**FDIC**



Personal Banking  
Business Banking  
Westfield Mortgage  
How to Bank with us  
About Westfield Bank  
Help  
Agent Resources  
Premium Finance  
Health Savings Accounts  
Home

**Exhibit 1**

### Form of Stipulation for Concurrent Use Proceedings

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Application Serial No. 76/165113

In the matter of trademark Application Serial No. 76/159889

For the marks WESTFIELD GROUP and WESTFIELD BANK

Published in the Official Gazette on May 28, 2002

Published in the Official Gazette on June 10, 2003, respectively

Westfield Savings Bank d/b/a

**Westfield Bank,**

Opposer,

**y.**

**Ohio Farmers Insurance Company,**

**Applicant.**

**CONSOLIDATED**

Opposition No. 91153975 (parent)

Opposition No. 91157514

BOX TTAB

**NO FEE**

**Commissioner for Trademarks**

**2900 Crystal Drive**

Arlington, VA 22202-3513

## JOINT STATEMENT IN SUPPORT OF CONCURRENT USE REGISTRATIONS

**Sir/Madam:**

Pursuant to 37 C.F.R. §2.99, Westfield Savings Bank d/b/a Westfield Bank ("WSB") (Applicant in pending application Serial No. 76/229151) and Westfield Financial Corporation ("WFC") (Applicant in pending application Serial No. 76/159889) hereby submit the following joint statement in support of their respective applications for concurrent use registrations of the mark WESTFIELD BANK.



## **The Applicants**

1. WSB is the wholly-owned subsidiary of Westfield Financial, Inc. ("WFD"), whose stock is traded on the American Stock Exchange under the symbol "WFD," and the indirect subsidiary of Westfield Mutual Holdings Company ("WMHC" and, collectively with WSB and WFD, the "Massachusetts Parties"). WSB is headquartered at 141 Elm Street, Westfield, Massachusetts and currently operates ten branches in Massachusetts.

2. WFC is a wholly-owned subsidiary of Ohio Farmers Insurance Company ("Ohio Farmers"). Ohio Farmers is the parent company of a group of property and casualty insurance companies collectively referred to as the Westfield Companies (collectively with WFC and Ohio Farmers, the "Ohio Parties"). WFC is headquartered and currently operates one branch at Two Park Circle, Westfield Center, Ohio.

## **Uses of WESTFIELD BANK by the Applicants**

3. WSB claims (i) that it has provided various banking services under the name "Westfield Savings Bank" from April 1853 to approximately March 1997, when it deleted the word "Savings" from its name, and (ii) that it has since used the WESTFIELD BANK mark in interstate commerce in the Commonwealth of Massachusetts in connection with various banking services continuously from March 1997 to the present. WSB neither uses nor intends to use the WESTFIELD BANK mark outside the New England Territory (as defined in paragraph 14 below).

4. WFC claims to have begun using WESTFIELD BANK as a service mark in connection with "banking; savings and loan services" in Ohio and other states in approximately February 2001. WFC neither uses nor intends to use the WESTFIELD BANK mark in the New England Territory (as defined in paragraph 14 below).

## **The Applications and Opposition Proceedings**

5. On November 6, 2000, WFC filed an intent-to-use federal trademark application (Serial No. 76/159889) to register WESTFIELD BANK in connection with "banking; savings and loan services."

6. On March 23, 2001, WSB filed a use-based federal trademark application (Serial No. 76/229151) to register the mark WESTFIELD BANK in connection with "retail, commercial, savings, and mortgage banking services, namely, individual, partnership and corporate deposit accounts; personal, business and commercial loans, lines of credit and lease financing; safe deposit, depository and safekeeping services; and personal, consumer, business and commercial financial transactional services", and such application is currently in suspension pending the outcome of the WESTFIELD BANK and WESTFIELD GROUP trademark applications filed by WFC and Ohio Farmers, respectively.

7. The Massachusetts Parties filed (i) Notice of Opposition No. 91157514 with respect to Serial No. 76/159889 (WESTFIELD BANK) and (ii) Opposition No. 91153975 with respect to

Serial No. 76/165113 (WESTFIELD GROUP). These oppositions were, upon joint consent motions of the Massachusetts Parties and the Ohio Parties, consolidated under Opposition No. 91153975.

### **Internet Domain Names**

8. On July 10, 2000, WSB registered the domain name "westfieldbank.com" and now operates an Internet web site accessible via that domain name.

9. On July 12, 2000, WFC registered the domain name "westfield-bank.com," which WFC and/or an affiliated company is using in connection with providing banking services.

### **The Settlement Agreement**

10. Each of the Massachusetts Parties, on the one hand, and the Ohio Parties, on the other hand, contends that it has priority to use and register certain trade names, service marks, and/or domain names containing the "Westfield" name in its respective geographic area.

11. Based upon the best information available to the parties, it appears that they have become entitled to use each of their respective marks in their respective geographic areas as a result of their concurrent lawful use in commerce on such goods and in connection with such services, and in such manner, that confusion, mistake, or deception has not resulted from such concurrent use in their respective geographic areas; and, while there has been no actual confusion, mistake, or deception up to this time, the parties desire to take actions necessary to ensure that confusion, mistake, or deception will not likely result in the future from such continued concurrent use in their respective geographic areas.

12. The Massachusetts Parties and the Ohio Parties have agreed to resolve their differences and to settle the controversy between them regarding use and registration of WESTFIELD BANK, and to take actions necessary to ensure that confusion, mistake or deception will not likely result from the continued concurrent use of the respective marks, on the terms and conditions set forth in a Settlement Agreement (the "Agreement"), dated as of December 23, 2004, regarding their respective future concurrent uses of the mark WESTFIELD BANK, key aspects of which are described below.

13. The parties have agreed that each of WSB and WFC shall be permitted to continue to use the WESTFIELD BANK mark in its respective geographic area for banking and savings and loan services subject to the terms and conditions of the Agreement.

14. The Ohio Parties have agreed not to use WESTFIELD BANK for banking and savings and loan services in the New England Territory, and the Massachusetts Parties have agreed not to use WESTFIELD BANK for banking and savings and loan services outside of the New England Territory. Under the Agreement, (i) the "New England Territory" means the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and that portion of the State of New York that lies East of Interstate 81, as depicted on the attached map of New York

State, including New York City and Long Island (see Exhibit A); (ii) "Geographic Territory" means either the New England Territory or the portion of the United States outside of the New England Territory, as the case may be; and (iii) "use" within a specified Geographic Territory means (a) use of the mark in connection with the operation of a branch bank or other physical presence within the specified Geographic Territory, or (b) use of the mark in connection with advertising or other solicitation activities targeting customers or prospective customers in the specified Geographic Territory.

15. Regarding the use of marks on the Internet, the parties have agreed that (i) WSB shall be permitted to maintain its registration of and to use the westfieldbank.com domain name as long as such domain name is not used in connection with advertising or other solicitation activities specifically targeting customers or potential customers outside of the New England Territory, and (ii) the Ohio Parties shall be permitted to maintain their registration of and to use the westfield-bank.com domain name as long as such domain name is not used in connection with advertising or other solicitation activities specifically targeting customers or potential customers within the New England Territory. Notwithstanding the foregoing, the parties have acknowledged and agreed that their respective Internet web sites are and may continue to be accessible to customers located in each other's territories and that any conflict arising from such accessibility shall be addressed through the following procedures set forth in paragraphs 16 and 17.

16. Within sixty (60) days after the effective date of the Agreement, each party will have:

- (i) in order to make certain that there is no likelihood of confusion arising from the parties' respective Internet uses of WESTFIELD BANK in their respective Geographic Territory, altered the first page of their respective web sites for Westfield Bank to prominently state, in equal size: (a) in the case of WSB's web site: "Are you looking for Westfield Bank of Ohio?" with a hyperlink to the Ohio Parties' web site for Westfield Bank; and (b) in the case of the Ohio Parties' web site: "Are you looking for Westfield Bank of Massachusetts?", with a hyperlink to the WSB web site;
- (ii) incorporated reasonably specific geographic and other business identification information into such party's web site home page; and
- (iii) adopted other internal procedures reasonably calculated to identify and redirect incoming web traffic from outside the party's respective Geographic Territory or intended for the other party's web site.

17. The parties will continue to consult each other in good faith to establish and refine procedures for avoiding customer confusion, redirecting misdirected communications, and preserving the separate identities of the parties. The parties will also consult each other before registering and using any additional domain names containing the word "westfield" for banking or savings and loan services.

18. Within fifteen (15) days after the effective date of the Agreement, WSB will have filed an amendment to its federal trademark application to register WESTFIELD BANK to request a concurrent use registration limited to the New England Territory.

19. Within fifteen (15) days after the effective date of the Agreement, WFC will have filed an amendment to its federal trademark application to register WESTFIELD BANK (i) to allege use so as to make such application eligible for a concurrent use registration and (ii) to request a concurrent use registration with respect to the portion of the United States other than the New England Territory.

[Signatures on next page]

WHEREFORE, it is urged that the applicants are entitled to concurrent use registrations of the WESTFIELD BANK mark.

Respectfully submitted,

WESTFIELD SAVINGS BANK d/b/a  
WESTFIELD BANK

By its attorney,

---

Andrew J. Ferren, Esq.  
GOULSTON & STORRS, P.C.  
400 Atlantic Avenue  
Boston, MA 02110  
Telephone: (617) 574-3546  
Facsimile: (617) 574-7518

WESTFIELD FINANCIAL CORPORATION

By its attorney,

---

Joseph R. Dreitler, Esq.  
JONES DAY  
P.O. Box 165017  
Columbus, OH 43216-5017  
Telephone: (614) 469-3902  
Facsimile: (614) 461-4198

Exhibit 2

Form of Consent

BOX RESPONSES – NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Re: Serial No. 76/229151: WESTFIELD BANK

Dear Sir or Madam:

Ohio Farmers Insurance Company of Westfield Center, Ohio, which is using the trademark WESTFIELD GROUP in connection with [recite services] in the states of [insert states in which mark is currently being used], and which has filed U.S. trademark application Serial No. 76/165113, and which has been using said mark in connection with such services since approximately February 2001, hereby consents to the registration of WESTFIELD BANK by Westfield Savings Bank d/b/a Westfield Bank.

Dated: \_\_\_\_\_

OHIO FARMERS INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Application Serial No. 76/165113  
In the matter of trademark Application Serial No. 76/159889

For the marks WESTFIELD GROUP and WESTFIELD BANK

Published in the Official Gazette on May 28, 2002  
Published in the Official Gazette on June 10, 2003, respectively

Westfield Savings Bank d/b/a	)	
Westfield Bank,	)	
Opposer,	)	CONSOLIDATED
	)	
v.	)	Opposition No. 91153975 (parent)
	)	Opposition No. 91157514
Ohio Farmers Insurance Company,	)	
Applicant.	)	

BOX TTAB  
NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

JOINT STATEMENT IN SUPPORT OF CONCURRENT  
USE REGISTRATIONS

Sir/Madam:

Pursuant to 37 C.F.R. §2.99, Westfield Savings Bank d/b/a Westfield Bank ("WSB") (Applicant in pending application Serial No. 76/229151) and Westfield Financial Corporation ("WFC") (Applicant in pending application Serial No. 76/159889) hereby submit the following joint statement in support of their respective applications for concurrent use registrations of the mark WESTFIELD BANK.



## **The Applicants**

1. WSB is the wholly-owned subsidiary of Westfield Financial, Inc. ("WFD"), whose stock is traded on the American Stock Exchange under the symbol "WFD," and the indirect subsidiary of Westfield Mutual Holdings Company ("WMHC" and, collectively with WSB and WFD, the "Massachusetts Parties"). WSB is headquartered at 141 Elm Street, Westfield, Massachusetts and currently operates ten branches in Massachusetts.

2. WFC is a wholly-owned subsidiary of Ohio Farmers Insurance Company ("Ohio Farmers"). Ohio Farmers is the parent company of a group of property and casualty insurance companies collectively referred to as the Westfield Companies (collectively with WFC and Ohio Farmers, the "Ohio Parties"). WFC is headquartered and currently operates one branch at Two Park Circle, Westfield Center, Ohio.

## **Uses of WESTFIELD BANK by the Applicants**

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5. On November 6, 2000, WFC filed an intent-to-use federal trademark application (Serial No. 76/159889) to register WESTFIELD BANK in connection with "banking; savings and loan services."

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Serial No. 76/165113 (WESTFIELD GROUP). These oppositions were, upon joint consent motions of the Massachusetts Parties and the Ohio Parties, consolidated under Opposition No. 91153975.

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10. Each of the Massachusetts Parties, on the one hand, and the Ohio Parties, on the other hand, contends that it has priority to use and register certain trade names, service marks, and/or domain names containing the "Westfield" name in its respective geographic area.

11. Based upon the best information available to the parties, it appears that they have become entitled to use each of their respective marks in their respective geographic areas as a result of their concurrent lawful use in commerce on such goods and in connection with such services, and in such manner, that confusion, mistake, or deception has not resulted from such concurrent use in their respective geographic areas; and, while there has been no actual confusion, mistake, or deception up to this time, the parties desire to take actions necessary to ensure that confusion, mistake, or deception will not likely result in the future from such continued concurrent use in their respective geographic areas.

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- (ii) incorporated reasonably specific geographic and other business identification information into such party's web site home page; and
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[Signatures on next page]

WHEREFORE, it is urged that the applicants are entitled to concurrent use registrations of the WESTFIELD BANK mark.

Respectfully submitted,

WESTFIELD SAVINGS BANK d/b/a  
WESTFIELD BANK

By its attorney,



Andrew J. Ferren, Esq.  
GOULSTON & STORRS, P.C.  
400 Atlantic Avenue  
Boston, MA 02110  
Telephone: (617) 574-3546  
Facsimile: (617) 574-7518

WESTFIELD FINANCIAL CORPORATION

By its attorney,

---

Joseph R. Dreitler, Esq.  
JONES DAY  
P.O. Box 165017  
Columbus, OH 43216-5017  
Telephone: (614) 469-3902  
Facsimile: (614) 461-4198

Exhibit B

***goulston&storrs***  
counsellors at law

Consent

BOX RESPONSES – NO FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Re: Serial No. 76/229151: WESTFIELD BANK

Dear Sir or Madam:

Ohio Farmers Insurance Company of Westfield Center, Ohio, which is using the trademark WESTFIELD GROUP in connection with insurance underwriting services in the field of property, casualty, accident, and health; fidelity and surety services; insurance agency services in the field of property, casualty, accident and health; insurance brokerage services; banking and financing services; financial planning services; financial management services in forty-one (41) states, and which has filed U.S. trademark application Serial No. 76/165113, and which has been using said mark in connection with such services since approximately February 2001, hereby consents to the concurrent registration of WESTFIELD BANK by Westfield Savings Bank d/b/a Westfield Bank.

Dated: 12-30-2004

OHIO FARMERS INSURANCE  
COMPANY

By: Frank A Carrino  
Name: Frank A. Carrino  
Title: Corporate Counsel and Secretary

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Application Serial No. 76/165113  
In the matter of trademark Application Serial No. 76/159889

For the marks WESTFIELD GROUP and WESTFIELD BANK

Published in the Official Gazette on May 28, 2002  
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Westfield Savings Bank d/b/a	)	
Westfield Bank,	)	
Opposer,	)	CONSOLIDATED
	)	
v.	)	Opposition No. 91153975 (parent)
	)	Opposition No. 91157514
Ohio Farmers Insurance Company,	)	
Applicant.	)	

BOX TTAB  
NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

JOINT STATEMENT IN SUPPORT OF CONCURRENT  
USE REGISTRATIONS

Sir/Madam:

Pursuant to 37 C.F.R. §2.99, Westfield Savings Bank d/b/a Westfield Bank ("WSB") (Applicant in pending application Serial No. 76/229151) and Westfield Financial Corporation ("WFC") (Applicant in pending application Serial No. 76/159889) hereby submit the following joint statement in support of their respective applications for concurrent use registrations of the mark WESTFIELD BANK.



## **The Applicants**

1. WSB is the wholly-owned subsidiary of Westfield Financial, Inc. ("WFD"), whose stock is traded on the American Stock Exchange under the symbol "WFD," and the indirect subsidiary of Westfield Mutual Holdings Company ("WMHC" and, collectively with WSB and WFD, the "Massachusetts Parties"). WSB is headquartered at 141 Elm Street, Westfield, Massachusetts and currently operates ten branches in Massachusetts.

2. WFC is a wholly-owned subsidiary of Ohio Farmers Insurance Company ("Ohio Farmers"). Ohio Farmers is the parent company of a group of property and casualty insurance companies collectively referred to as the Westfield Companies (collectively with WFC and Ohio Farmers, the "Ohio Parties"). WFC is headquartered and currently operates one branch at Two Park Circle, Westfield Center, Ohio.

## **Uses of WESTFIELD BANK by the Applicants**

3. WSB claims (i) that it has provided various banking services under the name "Westfield Savings Bank" from April 1853 to approximately March 1997, when it deleted the word "Savings" from its name, and (ii) that it has since used the WESTFIELD BANK mark in interstate commerce in the Commonwealth of Massachusetts in connection with various banking services continuously from March 1997 to the present. WSB neither uses nor intends to use the WESTFIELD BANK mark outside the New England Territory (as defined in paragraph 14 below).

4. WFC claims to have begun using WESTFIELD BANK as a service mark in connection with "banking; savings and loan services" in Ohio and other states in approximately February 2001. WFC neither uses nor intends to use the WESTFIELD BANK mark in the New England Territory (as defined in paragraph 14 below).

## **The Applications and Opposition Proceedings**

5. On November 6, 2000, WFC filed an intent-to-use federal trademark application (Serial No. 76/159889) to register WESTFIELD BANK in connection with "banking; savings and loan services."

6. On March 23, 2001, WSB filed a use-based federal trademark application (Serial No. 76/229151) to register the mark WESTFIELD BANK in connection with "retail, commercial, savings, and mortgage banking services, namely, individual, partnership and corporate deposit accounts; personal, business and commercial loans, lines of credit and lease financing; safe deposit, depository and safekeeping services; and personal, consumer, business and commercial financial transactional services", and such application is currently in suspension pending the outcome of the WESTFIELD BANK and WESTFIELD GROUP trademark applications filed by WFC and Ohio Farmers, respectively.

7. The Massachusetts Parties filed (i) Notice of Opposition No. 91157514 with respect to Serial No. 76/159889 (WESTFIELD BANK) and (ii) Opposition No. 91153975 with respect to

Serial No. 76/165113 (WESTFIELD GROUP). These oppositions were, upon joint consent motions of the Massachusetts Parties and the Ohio Parties, consolidated under Opposition No. 91153975.

### **Internet Domain Names**

8. On July 10, 2000, WSB registered the domain name "westfieldbank.com" and now operates an Internet web site accessible via that domain name.

9. On July 12, 2000, WFC registered the domain name "westfield-bank.com," which WFC and/or an affiliated company is using in connection with providing banking services.

### **The Settlement Agreement**

10. Each of the Massachusetts Parties, on the one hand, and the Ohio Parties, on the other hand, contends that it has priority to use and register certain trade names, service marks, and/or domain names containing the "Westfield" name in its respective geographic area.

11. Based upon the best information available to the parties, it appears that they have become entitled to use each of their respective marks in their respective geographic areas as a result of their concurrent lawful use in commerce on such goods and in connection with such services, and in such manner, that confusion, mistake, or deception has not resulted from such concurrent use in their respective geographic areas; and, while there has been no actual confusion, mistake, or deception up to this time, the parties desire to take actions necessary to ensure that confusion, mistake, or deception will not likely result in the future from such continued concurrent use in their respective geographic areas.

12. The Massachusetts Parties and the Ohio Parties have agreed to resolve their differences and to settle the controversy between them regarding use and registration of WESTFIELD BANK, and to take actions necessary to ensure that confusion, mistake or deception will not likely result from the continued concurrent use of the respective marks, on the terms and conditions set forth in a Settlement Agreement (the "Agreement"), dated as of December 23, 2004, regarding their respective future concurrent uses of the mark WESTFIELD BANK, key aspects of which are described below.

13. The parties have agreed that each of WSB and WFC shall be permitted to continue to use the WESTFIELD BANK mark in its respective geographic area for banking and savings and loan services subject to the terms and conditions of the Agreement.

14. The Ohio Parties have agreed not to use WESTFIELD BANK for banking and savings and loan services in the New England Territory, and the Massachusetts Parties have agreed not to use WESTFIELD BANK for banking and savings and loan services outside of the New England Territory. Under the Agreement, (i) the "New England Territory" means the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and that portion of the State of New York that lies East of Interstate 81, as depicted on the attached map of New York

State, including New York City and Long Island (see Exhibit A); (ii) "Geographic Territory" means either the New England Territory or the portion of the United States outside of the New England Territory, as the case may be; and (iii) "use" within a specified Geographic Territory means (a) use of the mark in connection with the operation of a branch bank or other physical presence within the specified Geographic Territory, or (b) use of the mark in connection with advertising or other solicitation activities targeting customers or prospective customers in the specified Geographic Territory.

15. Regarding the use of marks on the Internet, the parties have agreed that (i) WSB shall be permitted to maintain its registration of and to use the westfieldbank.com domain name as long as such domain name is not used in connection with advertising or other solicitation activities specifically targeting customers or potential customers outside of the New England Territory, and (ii) the Ohio Parties shall be permitted to maintain their registration of and to use the westfield-bank.com domain name as long as such domain name is not used in connection with advertising or other solicitation activities specifically targeting customers or potential customers within the New England Territory. Notwithstanding the foregoing, the parties have acknowledged and agreed that their respective Internet web sites are and may continue to be accessible to customers located in each other's territories and that any conflict arising from such accessibility shall be addressed through the following procedures set forth in paragraphs 16 and 17.

16. Within sixty (60) days after the effective date of the Agreement, each party will have:

- (i) in order to make certain that there is no likelihood of confusion arising from the parties' respective Internet uses of WESTFIELD BANK in their respective Geographic Territory, altered the first page of their respective web sites for Westfield Bank to prominently state, in equal size: (a) in the case of WSB's web site: "Are you looking for Westfield Bank of Ohio?" with a hyperlink to the Ohio Parties' web site for Westfield Bank; and (b) in the case of the Ohio Parties' web site: "Are you looking for Westfield Bank of Massachusetts?", with a hyperlink to the WSB web site;
- (ii) incorporated reasonably specific geographic and other business identification information into such party's web site home page; and
- (iii) adopted other internal procedures reasonably calculated to identify and redirect incoming web traffic from outside the party's respective Geographic Territory or intended for the other party's web site.

17. The parties will continue to consult each other in good faith to establish and refine procedures for avoiding customer confusion, redirecting misdirected communications, and preserving the separate identities of the parties. The parties will also consult each other before registering and using any additional domain names containing the word "westfield" for banking or savings and loan services.

18. Within fifteen (15) days after the effective date of the Agreement, WSB will have filed an amendment to its federal trademark application to register WESTFIELD BANK to request a concurrent use registration limited to the New England Territory.

19. Within fifteen (15) days after the effective date of the Agreement, WFC will have filed an amendment to its federal trademark application to register WESTFIELD BANK (i) to allege use so as to make such application eligible for a concurrent use registration and (ii) to request a concurrent use registration with respect to the portion of the United States other than the New England Territory.

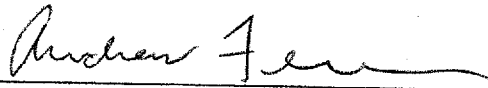
[Signatures on next page]

WHEREFORE, it is urged that the applicants are entitled to concurrent use registrations of the WESTFIELD BANK mark.

Respectfully submitted,

WESTFIELD SAVINGS BANK d/b/a  
WESTFIELD BANK

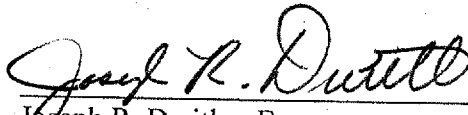
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